

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

F.A.O.No.6837 of 2016 (O&M)

Date of Decision: November 28, 2016

Uttar Haryana Bijli Vitran Nigam Limited, Sector 6, Panchkula

...Petitioner

Versus

M/s Bharat Electricals, 268, Industrial Area, Phase 1, Panchkula & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Vishal Garg, Advocate,
for the appellant.**

**Mr.Sanjay Joshi, Advocate,
for the caveator-respondents.**

AMIT RAWAL, J. (Oral)

Notice of motion.

**Mr.Sanjay Joshi, Advocate, who is on the caveat, accepts notice
on behalf of the respondents.**

**Mr.Vishal Garg, learned counsel for the appellant submits that
the present appeal is arising out of the dismissal of the objections filed
under Section 34 of the Arbitration and Conciliation Act, 1996 (for short
“1996 Act”) seeking setting-aside of the arbitration award dated 4.6.2015.
The Objecting Court has dismissed the objections on the premise that as per
the provisions of Section 19 of the new Act, i.e., Micro, Small and Medium
Enterprises Development Act, 2006 (for short “2006 Act”), the application
for setting-aside the award has to be accompanied by 75% of the amount
and, therefore, erroneously dismissed the same being barred by law of**

limitation, for, the fact remains that the claim of the Contractor/supplier claiming interest on the outstanding amount was, *ex-facie*, barred by law of limitation. In fact, four contracts were clubbed together and the last payment was of two bills of 1996 and one of 1999, whereas the reference to the Arbitrator is of 29.9.2003 and there is a candid admission of the claimant and, therefore, the Objecting Court was required to go into the merits of the matter de hors of the non-deposit of the amount. The contract also envisages the reference of dispute to an independent Arbitrator and, therefore, the reference to the Facilitation Centre established under 2006 Act was without jurisdiction, thus, the order under challenge, much less the award is liable to be set-aside.

Per contract, Mr.Sanjay Joshi, learned counsel for the respondents submits that as per the ratio decidendi culled out by the Hon'ble Supreme Court in **Goodyear India Limited Versus Norton Intech Rubbers (P) Ltd. & another**, 2012 (6) SCC 345, the requirement of Section 19 of 2006 Act is mandatory, thus, the objections have rightly been dismissed. On merits, he submits that as per the provisions of Section 22 of 2006 Act, the buyer has to maintain the account of interest paid to the supplier in the audited balance sheet and as per the provisions of the Income Tax Act, 1961, the balance sheet has to be maintained for a period of six years. Even the claim being *ex-facie* barred has been noticed by the Arbitrator as the respondent-contractor had been writing letters from 1999 till 2002 for payment of the interest and since the appellant did not adhere to the request, sought the reference in 2003, therefore, was not barred by law of limitation.

He further submits that the jurisdiction of the Facilitation

Centre was not objected to and, therefore, the appellant cannot raise the plea for the first time in the objections as deemed to have been waived as per the provisions of Section 4 of 1996 Act.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Vishal Garg, for, Section 4 of 1996 Act deals with the waiver. It is conceded position on record that the appellant did not raise the objection qua the jurisdiction of the Facilitation Centre as sought to be submitted before the Objecting Court and this Court and, therefore, in my view deemed to be waived.

As regards the claim being barred by law of limitation, the same could not have been instituted as having failed to pay 75% of the amount as per Section 19 of 1996 Act, which reads as under:-

“Application for setting aside decree, award or order.-No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such Court:

Provided that pending disposal of the application to set aside the decree, award or order, the Court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.”

There is no dispute to the ratio decidendi culled out in

Goodyear India Limited's case (supra), wherein it has been held that for

seeking setting aside of the award, it is the requirement of law to deposit 75% of the amount, therefore, the Objecting Court did not have any occasion to ponder upon the claim being barred by law of limitation, yet I would not refrain myself in delving upon the aforementioned provisions on the claim being barred by law of limitation. In order to appreciate the aforementioned contention, the relevant provisions of Section 22 are reproduced herein below:-

“22. Requirement to specify unpaid amount with interest in the annual statement of accounts.—Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:—

(i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

(ii) the amount of interest paid by the buyer in terms of section 16, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year;

(iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;

(iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.”

On perusal of the aforementioned provisions, the buyer has to indicate the principal amount and interest thereon in their annual statement

of accounts and as per the provisions of the Income Tax Act, the same have to be maintained for a period of six years. The Arbitrator at page 49 had indicated that four letters dated 27.7.1999, 24.11.2000, 21.12.2001 and 2.12.2002 have been addressed by the respondent-supplier for payment of interest on the amount paid. Once the appellant did not adhere to the aforementioned request, therefore, the claim in 2003 cannot be said to be barred by law of limitation in view of the provisions of Section 22 of 2006 Act.

The Arbitrator has also taken into consideration the letter dated 16.8.2002 Annexure C-22 received from the Government of India, Ministry of SSI & ARI, Udyog Bhawan, New Delhi addressed to the Secretary of the Haryana Industry Facilitation Council. The same reads thus:-

1. *“Reference was made to letter Annexure C-22 dated 16.8.2002 received from the Govt.of India Ministry of SSI & ARI, Udyog Bhawan, New Delhi addressed to the Secretary of the Haryana Industry Facilitation Council in which the query raised by the Haryana Facilitation Council in its letter No.TS/IFC/Policy/2001-02/65458 dated 6.5.2002 and followed by reminder dated 15.7.2002, the department clarified in sub para (ii) thereof as under:-*

“Claiming of interest by units even on the delayed payment which stood already settled although belatedly, it is stated that in the case of the interest to be accrued on payments of delayed for the period specified in the Act on transactions taking place on or

after 23rd September 1992, the supplier is within his right to claim interest.”

In view of what has been observed above, no ground for interference is made out.

Appeal stands dismissed.

November 28, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No